

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-217**

CRYSTAL C. WILSON

APPELLANT

**V. FINDINGS OF FACT, CONCLUSION OF LAW
AND RECOMMENDED ORDER**

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

** ** *

This matter came on for an evidentiary hearing on May 1, 2017, at 9:30 a.m., EST, at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Stephen T. McMurtry, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Crystal C. Wilson, was present at the evidentiary hearing and was not represented by legal counsel. The Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Kathleen Hines.

BACKGROUND

1. Crystal C. Wilson (Wilson) occupied the position of a Social Service Worker I in the Department for Community Based Services (DCBS), Northern Bluegrass Service Region. Wilson was a probationary employee as defined by KRS 18A.095, having been hired effective February 16, 2016.

2. On July 28, 2016, J. Alan Sisk, Appointing Authority for the Cabinet for Health and Family Services (Cabinet), notified Wilson she would be terminated from her position as a Social Service Worker I, effective July 29, 2016. He advised her that, as she was serving an initial probationary period, she had no right to appeal the termination to the Kentucky Personnel Board unless the termination was based on unlawful discrimination.

3. KRS 18A.111 provides, in part, that "except when appointed to a job classification with an initial probationary period in excess of six months...an employee shall serve a six month probationary period when she is initially appointed to the classified service. An employee may be separated from her position...during this initial probationary period and shall not have a right to appeal, except as provided by KRS 18A.095." That statute substantially applies to classified employees, but at KRS 18A.095(14)(a) it states: "Any employee...who believes she has been discriminated against may appeal to the board." KRS 18A.095(22)(a)

narrows the definition of discrimination to acts that violate laws prohibiting favor for, or discrimination against or bias in respect to political affiliations or opinions, among other constitutionally protected rights of sex, race, disability and age.

4. Crystal Wilson appealed her dismissal on August 11, 2016, alleging that she was dismissed from her employment for political discrimination. On her appeal form under the Statement of Appeal, she alleged: "I am appealing my termination. In 2010, I filed a hostile work complaint on my supervisor. Shortly thereafter, she filed an MDA on me. I was told by HR and the SRAA, if I resigned, the MDA would go away, and I would be eligible (Sic) for employment with the State. I was approached by the SRAA to Northern Bluegrass by the means of another employee to apply for P&P. I interviewed and was hired. I began in Feb. 2016 and in July 2016, a report of neglect was called on me. On or about the first of August 2016, I was told they had to release me from my duties due to falsifying my application and lying during the interview. I resigned from Henry County due to the distance I was driving, not due to the MDA. I was also told if I resigned the MDA would no longer be on my record." (Sic)

5. The Appellant, **Crystal C. Wilson**, attempted to present evidence that political discrimination was the cause for her job termination. She testified that her ex-husband, in a court proceeding, made the allegation that she had given her son medication that caused him to have a seizure, when, in fact, her son was suffering from viral encephalitis. She said her ex-husband would do anything to harm her. She testified that she had consulted an attorney, who advised her to allege political discrimination in her Appellant's Statement on her appeal form. Wilson was unable to present any evidence supporting her allegation that political discrimination motivated her dismissal.

6. **Jason Mellenkamp**, Service Region Administrator Associate for the Department, testified Crystal Wilson told him at a December 18, 2015 meeting that she regained employment with DCBS on December 1, 2008, as an Investigative Worker, but resigned that position on September 15, 2010, because driving time to and from her home to work in Henry County took two hours one way. Mellenkamp subsequently learned Wilson had resigned, perhaps, in part because of a threatened Major Disciplinary Action for falsification of records. Mellenkamp testified that with that background on Wilson, he "would have put the brakes on her rehire in 2016 to find out what had happened." He said there was no reference in her most recent application for employment with DCBS that she left work because of a lengthy "drive time."

7. **Kathleen Mullins**, Service Region Administrator for the Northern Bluegrass Service Region (DCBS), introduced a letter she wrote to Jay Klein, Division Director, Office of Human Resource Management, requesting that Wilson be dismissed from her probationary employment. The letter set out the history of the Department's hiring Wilson into probationary employment. On January 6, 2016, Lori Bounds, Administrative Specialist III, confirmed through Erika Marshall, Human Resource Generalist, that Wilson was eligible for reinstatement. On that same day, Patricia Murphy inquired of Marshall whether Wilson had resigned with prejudice or was dismissed. Marshall advised her that there was nothing showing in the system. The Department hired Wilson on February 16, 2016.

8. On July 11, 2016, the DCBS Director notified Mullins that Wilson was “under an employee investigation.” The investigation had concluded that on August 26, 2010, Wilson chose to resign from her employment rather than face disciplinary action for falsification of records that could have resulted in her discharge. Mullins reviewed Wilson’s application for her most recent employment, but found no reference of these events. As a result, Mullins advised Jay Klein that Wilson had “failed to honestly list the reason for her exit from Henry County” and that “management lacked confidence that Wilson would be able to perform the SSW I job with integrity and should be separated from DCBS.”

FINDING OF FACT

There is no evidence that the Cabinet dismissed Crystal C. Wilson from her employment because of political discrimination.

CONCLUSION OF LAW

The appeal of Crystal C. Wilson should be dismissed, as it is completely without any factual foundation and support.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **CRYSTAL C. WILSON V. CABINET FOR HEALTH AND FAMILY SERVICES, (APPEAL NO. 2016-217)** be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

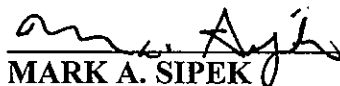
Any document filed with the Personnel Board shall be served on the opposing party.

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

ISSUED at the direction of **Hearing Officer Stephen T. McMurtry** this 30th day of June, 2017.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Kathleen Hines
Ms. Crystal Wilson